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TO RUEHC/SECSTATE WASHDC 6264
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RUEHNE/AMEMBASSY NEW DELHI 1090
RUEHKA/AMEMBASSY DHAKA 0202
RUEHIL/AMEMBASSY ISLAMABAD 7185
RUEHKT/AMEMBASSY KATHMANDU 5292
RUEHKP/AMCONSUL KARACHI 2198
RUEHCG/AMCONSUL CHENNAI 7771
RUEHBI/AMCONSUL MUMBAI 5431
RUEATRS/DEPT OF TREASURY WASHDC
RUCPDOG/DEPT OF COMMERCE WASHDC

UNCLAS SECTION 01 OF 03 COLOMBO 000848

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SENSITIVE

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EEB/IFD/OIA FOR HGOETHERT, L/CID FOR SMCDONALD AND SCA/INS
TREASURY FOR LESLIE HULL
COMMERCE FOR JONATHAN STONE

E.O 12958: N/A

TAGS: [CASC](#) [EINV](#) [KIDE](#) [OPIC](#) [PGOV](#) [CE](#)

SUBJECT: SRI LANKA: INVESTMENT DISPUTES AND EXPROPRIATION CLAIMS
REPORT

REF: A) STATE 55422

¶1. (SBU) The following three claims are hereby submitted for 2007,
in accordance with reftel request:

¶2. (SBU) a. Claimant A

b. 2004

c. Claimant A had been contracted in June 2000 to provide power to the national grid under a combined cycle agreement signed with the state-owned Ceylon Electricity Board (CEB), which retains the monopoly on power transmission. CEB, together with its subsidiary, Lanka Electricity Company, has the monopoly on power distribution in the country. Under the Power Purchase Agreement (PPA), the CEB was required to establish two letters of credit with an aggregate value of \$20 million.

In March 2004, due to a fire that had shut down the Claimant's power plant, and at the request of the Government of Sri Lanka (GSL), a standstill agreement was signed between Claimant A, CEB, and the Ministry of Finance (MOF) to operate the plant in open cycle mode. In May 2004, the agreement was rendered invalid as the CEB did not make full payment for energy generated under the terms of the open cycle agreement. As a result \$3 million was still owed to Claimant.

Claimant met with the CEB, the Secretary of Finance, and the Secretary of the Ministry of Power & Energy to discuss the

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outstanding payment. GSL officials requested a renegotiation and as a result, Claimant offered a reduction of \$ 2 million out of the total \$3 million outstanding. The Claimant received a new agreement from the Attorney General's Department through the CEB, which reflected the new payment terms. The Claimant accepted this new agreement. Nonetheless, despite Cabinet approval and CEB Board approval, the Chairman of the CEB refused to make the required payment of \$1 million. Establishment of letters of credit, as per the original PPA, has also not been implemented to date.

Following an administration change in the GSL, the Ministry of Finance began citing an Attorney General's opinion, claiming that

the GSL is not obligated to pay under the terms of the standstill agreement (as later revised) because the agreement was entered into "under duress." (Comment: Fear of political backlash from potential blackouts may have caused the GSL to press Claimant to continue operating under the less efficient and more expensive open cycle method, instead of shutting down and quickly repairing the closed cycle facility. But attempting to void a contract under this legal theory, while creative, appears to have no merit.)

Post has made representations on this matter to the Finance Secretary, the Minister of Power & Energy, the Minister of

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Enterprise Development & Investment Promotion, and the Presidential Adviser on Economic Affairs. In fall 2006, the Ambassador and Econoffs met with former Minister of Investment Promotion, Rohitha Bogollagama (now Minister of Foreign Affairs) on numerous occasions regarding this dispute. Bogollagama made serious attempts to resolve the matter, but with his change in portfolio the efforts lost momentum.

As of June, 2007, Claimant has continued to make representations to the Ministry of Power & Energy, the CEB, and the Ministry of Finance on the issues of the outstanding open cycle payment and the establishment of letters of credit, as per the agreements.

The Embassy is engaging with the relevant government agencies to resolve the issue. Ambassador and Claimant met together with the Minister of Power & Energy on April 25, 2007. The Minister acknowledged that Claimant should receive payment and the outstanding letters of credit. The Minister said he would urge the GSL-owned bank responsible for establishing the letters of credit on behalf of the CEB to do so. Ambassador wrote to the Minister of Power & Energy to follow up on the matter on May 24. He received no reply to this letter. Ambassador called the Minister on June 14. Claimant provided most recent update on this issue in June, 2007.

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13. (SBU) a. Claimant B.

b. 2004

This is the first time for Post to report this case, which Post now considers closed. Claimant B was awarded a multi-million dollar tender by the GSL to establish vehicle emissions testing centers in Sri Lanka. The draft agreement was approved by the Cabinet on November 16, 2005, and was sent by the Commissioner General of Motor Traffic (CMT), who is authorized to sign on behalf of the government, to the Attorney General for ratification. However, the Attorney General reportedly advised that only terms published within the Request for Proposal could be included in the agreement and not subsequently-negotiated clauses, despite Cabinet approval of the additional clauses. On these grounds, the Attorney General refused to conclude a contract with Claimant B.

Post met with the CMT and former Ambassador Lunstead met with the Minister of Highways, the Minister of Transportation, the Minister of the Environment, and the Secretary of Finance on this matter. Although various officials assured the Ambassador that the issues would be sorted out, there was no progress in the CMT on signing the contract. In 2006, after spending approximately \$300,000 and extensive staff time on the development on this project, Claimant pulled out as a direct investor in this project. Now, a new local investor is taking the project forward with Claimant only providing technical expertise and equipment.

Claimant last provided an update in February 2007. Post considers this case closed.

14. (SBU) a. Claimant C

b. 2004

c. This is a newly reported case. Claimant C signed an agreement with the Mahaweli Trust Fund (MTF), a government agency, to operate

a lottery in Sri Lanka. A key component of the agreement was for proceeds from lottery ticket sales to be deposited into an escrow account jointly held by Claimant and MTF. However, MTF never signed this escrow agreement despite a resolution taken by the MTF Board to do so. Claimant nevertheless began to operate the lottery in accordance with the agreement, under the assumption that MTF would eventually sign the escrow agreement.

According to Claimant, MTF officials used the non-signing of the escrow as a bargaining tool to increase MTF's percentage of lottery proceeds, despite the agreement's clear stipulation of the manner in which proceeds would be shared. Claimant also declared that the MTF blocked access to the network of lottery ticket dealers, thereby breaching the contract in order to obstruct cash flow to Claimant. Since commencement of operations, the escrow account accrued monies from proceeds of ticket sales. However, Claimant was never paid its share. The GSL is in breach of contract for not signing the escrow account in order for Claimant to receive payment. Claimant has not been paid for its products and services, despite meeting its contractual obligations of installing and operating a trouble free lottery for almost two years. Claimant has been compelled to cease operations as it could no longer sustain the investment without generating income. Claimant has invested approximately \$15 million in the project and is attempting to reach a settlement with GSL on the issue.

The Ambassador and Econoff met with the Minister of Commerce and Secretary of Commerce to discuss this matter in May 2007. The

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Secretary of Commerce indicated that the GSL is willing to arrive at

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a settlement with Claimant. Claimant prefers a settlement over a court challenge, which would tie the matter up for years. Claimant and Commerce Secretary are scheduled to meet soon to discuss a possible settlement

15. (SBU) The Claimants are identified as follows:

- Claimant A: AES Kelanitissa (Private) Limited, a U.S.-owned subsidiary. Claimant A has not signed a Privacy Act Waiver.
- Claimant B: Environmental Systems Products Holdings Inc., a U.S. company. Claimant B has not signed a Privacy Act Waiver.

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- Claimant C: GTECH Lanka (Private) Limited, a subsidiary of GTECH Corporation. On August 29, 2006, GTECH Holdings Corporation; Lottomatica, S.p.A., the license holder for the Italian National Lottery; and the de Agostini Group, a privately held Italian holding company that is Lottomatica's majority shareholder, announced the merger of GTECH and Lottomatica. While this merger may result in GTECH being an Italian company, Embassy understands that GTECH continues maintaining offices in Rhode Island and is one of Rhode Island's large employers. The U.S. Department of Commerce's Advocacy Center evaluated these ownership changes and advised Post to continue advocacy on behalf of GTECH for this dispute. Claimant C has not signed a Privacy Act Waiver.

BLAKE